

**United States Department of Labor
Employees' Compensation Appeals Board**

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Huron, OH, Employer**

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**Docket No. 08-1739
Issued: January 7, 2009**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 6, 2008 which denied her request for an oral hearing. Because more than one year has elapsed between the most recent merit decision dated October 10, 2006 and the filing of this appeal on June 3, 2008, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2 and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On August 28, 2006 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim alleging that she sustained back and neck injuries on August 15, 2006, when her work vehicle was rear-ended by another vehicle while delivering mail. She stopped work on August 31, 2006 and returned to light duty with restrictions on September 1, 2006.

Appellant submitted an undated statement reporting the history of her injury. She also submitted evidence from Dr. Scott L. Ommert, a chiropractor, and Dr. Jeffrey Harwood, Board-certified in family medicine.

In a decision dated October 10, 2006, the Office denied appellant's claim on the grounds that the factual and medical evidence was not sufficient to establish the claim.

In an appeal form dated October 25, 2006 and received by the Office on November 1, 2006, appellant requested a review of the written record. She also submitted additional reports from Dr. Ommert and Dr. Harwood. By letter dated November 6, 2006, the Office advised appellant that they had received a CA-7 claiming compensation for October 23, 2006 but that her claim had been denied and she should exercise her appeal rights.

Additional medical evidence was received by the Office. On February 21, 2007 Alan J. Shapiro, Esquire, entered an appearance as appellant's representative and the Office acknowledged his appearance by letter dated March 27, 2007 and noted that the claim had been denied. Counsel forwarded additional medical evidence by letter dated September 13, 2007, and stated, "Please review the attached information I am submitting to your office. Upon receipt, please advise of the status." By letter dated October 9, 2007, the Office advised appellant again that the claim had been denied on October 10, 2006 and she should exercise her appeal rights.

In a letter dated November 26, 2007, appellant, through her attorney, requested that her claim be expanded to include subluxation of the spine.

On December 18, 2007 the Office denied appellant's request to expand her claim noting that her claim had not been accepted by the Office as work related and again advised her to exercise her appeal rights as set forth in the October 10, 2006 decision.

In a letter dated December 20, 2007 and postmarked December 21, 2007, appellant requested an oral hearing from the Office's December 18, 2007 correspondence.

By decision dated March 6, 2008, the Office denied appellant's request for an oral hearing. It found that the request was not timely filed as the request had been received on December 24, 2007 but the decision was issued October 10, 2006. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an

¹ 5 U.S.C. § 8124(b)(1).

oral hearing or a review of the written record by a representative of the Secretary.² Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.³

ANALYSIS

The only decision on appeal before the Board is the Office's March 6, 2008 decision denying appellant's request for a hearing in connection with its October 10, 2006 decision. The Board has no jurisdiction to review the October 10, 2006 decision as it was issued more than one year before the June 3, 2008 filing of the current appeal.⁴

The Office's March 6, 2008 decision denied appellant's oral hearing request as being untimely as it was made more than 30 days after the Office's October 10, 2006 decision. In the present case, in an appeal form dated October 25, 2006 and received by the Office on November 1, 2006, well within 30 days, appellant requested a review of the written record of the October 10, 2006 decision. The Board finds that the Office, in reaching its determination that appellant's hearing request was untimely, failed to consider the form received into the record on November 1, 2006, requesting a review of the written record. This request for a review of the written record was received by the Office within 30 days of the October 10, 2006 decision. The Board notes that the Office did not issue a decision with regard to appellant's timely request for a review of the written record.

Accordingly, the case must be remanded to the Office so that it may properly consider the October 25, 2006 form submitted by appellant and make a determination of whether it constitutes a timely request for review of the written record. After such further development as it considers necessary, the Office shall issue a *de novo* decision on appellant's request for a hearing.⁵

The decision of the Office dated March 6, 2008 is hereby set aside and the case remanded for further development consistent with this decision of the Board.

CONCLUSION

The Board finds that this case is not in posture for decision.

² 20 C.F.R. §§ 10.616, 10.618.

³ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁴ *See* 20 C.F.R. § 501.3(d)(2).

⁵ *Charles R. Hibbs*, 43 ECAB 699 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: January 7, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board